IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.09.2006

CORAM

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.Nos.25549 and 25088/2006
and
M.P.Nos.1 and 2/2006
in
W.P.No.25549/2006

S.Poongavanam ..Petitioner in both WPs.

Vs.

1.The Special Officer,
HH 565 Kadaladi Primary Agri. Co-op. Bank Ltd.,
Thiruvannamalai District.

2.The Zonal Joint Registrar,
Joint Registrar of Co-op. Societies,
Thiruvannamalai. ..Respondents in both WPs.

Prayer in W.P.No.25549/2006: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the respondents in connection with the impugned order passed by the 1st respondent dated 29.03.2004 and the order of the 2nd respondent in Na.Ka.No.1556/05 dated 12.5.2006 and quash the same and direct the respondent to reinstate the petitioner into service.

Prayer in W.P.No.25088/2006: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent to pay the subsistence allowance for the period from 29.3.2004 till 31.07.2006.

For Petitioner : Mr.K.Venkataramani

For Respondents: Mr.S.V.Durai Solaimalai for R1
Mr.R.Thirugnanam,Spl.GP for R2

ORDER

W.P.No.25088/2006: This writ petition is filed for a direction against the 1st respondent to pay

subsistence allowance for the period commencing from 29.03.2004 till 31.07.2006. That was the period in which the petitioner was placed under suspension.

2. W.P.No.25549/2006 challenges the impugned order of the 2nd respondent dated 12.05.2006 as also the order of the 1st respondent dated 29.03.2004.

3. The petitioner entered into the services of the Kadaladi Primary Agricultural Cooperative Bank Limited, Tiruvannamalai District as its Salesman in 1976 and he was subsequently promoted as its Secretary in the year 1989. He was placed under suspension by the 1st respondent on 29.03.2004 in public interest and on dereliction of duty. That order of suspension was ratified by the 2nd respondent after 1 = years on 20.05.2005. In the meantime, the petitioner was was issued with a charge memo by the 1st respondent dated 5.5.2004 making as many as 13 charges alleging misappropriation of fund to the tune of Rs.18,11,335/-. The petitioner has submitted his reply on 29.07.2004 denying the charges. He has also made representation on 10.11.2004 for reinstatement into services. The petitioner was paid subsistence allowance for the first three months and thereafter, the amount was not paid. He has made representations including 29.11.2004, 28.12.2004, 27.01.2005 and 06.12.2005 for revoking the order of suspension and requesting for payment of subsistence allowance. The original order of suspension passed by the 1st respondent has no legal basis and therefore, the subsequent ratification by the 2nd respondent on 20.5.2005 cannot validate the original order of suspension. The 2nd respondent has placed the petitioner under suspension by order dated 20.5.2005 for a period of three months which expired on 19.08.2005 and thereafter, the order of suspension has been extended from time to time and the last order was passed on 12.05.2006.

4. In respect of charges also, no final order has been passed. Earlier challenging the order of suspension the petitioner has moved this court by filing W.P.No.29136/2005 and there was an order of stay which was subsequently vacated on 17.03.2006. There was also a direction to pay subsistence allowance and subsequently, the writ petition came to be dismissed. As per the order of this Court, an enquiry initiated against the petitioner was completed and even after the lapse of five months no order has been passed nor the petitioner has been paid the subsistence allowance for the last two years. In these circumstances, the petitioner has filed the writ petition for a direction for payment of subsistence allowance for the period from 29.03.2004 to 31.07.2006. That apart, the other writ petition has been filed challenging the order of suspension as extended finally by the impugned order dated 12.05.2006.

5. The 1st respondent has filed a counter affidavit. It is the case of the 1st respondent that the petitioner has misappropriated to a tune of Rs.18,11,335/- which was ascertained from the audit special report on 31.03.2003. The serious irregularities include the irregularities regarding Fixed Deposits, Savings Accounts, jewel loans, Kisan Credit Cards System to farmers, Employees Housing loan, Employees Provident Fund etc. That apart, the petitioner has also made false entries regarding jewel loans and committed falsification of accounts. Since the continuation of petitioner was dangerous to the society, the 1st respondent/the Special Officer suspended the petitioner on 29.03.2004.

6. The charges were framed and the petitioner has also submitted his explanation. However, the petitioner has not appeared for domestic enquiry. The Joint Registrar of Co-operative Societies in his proceedings dated 20.05.2005, being the head of the Common Cadre Committee ratified the order of suspension on 29.03.2004 and continued the order of suspension. It was against the original order of suspension dated 29.03.2004 and subsequent ratification by the 2nd respondent dated 20.05.2005, the petitioner has filed W.P.No.29136/2005 and the same was dismissed by this court on 17.03.2006.

7. While so, it is not open to the petitioner to file the present writ petition, since the issue has already been decided by this Court. In the domestic enquiry the petitioner did not co-operate and has been delaying the proceedings. Once such delaying tactics is followed, filing of W.P.No.25088/2006 for a direction to pay subsistence allowance for the period from 29.03.2004 to 31.07.2006 is unsustainable and the petitioner is not entitled for payment of subsistence allowance as per the Payment of Subsistence Allowance Act, 1983.

8. Since the petitioner has already moved this Court in W.P.No.29136/2005 which was dismissed on 17.03.2006, W.P.No.25549/2006 filed on the same cause of action is not maintainable. It is also the case of the 1st respondent that the petitioner himself has repaid a sum of Rs.4,25,000/- which shows that he was involved in misappropriation. It is the case of the 1st respondent that the petitioner is an Officer as defined under section 2 (19) of the Tamilnadu Co-operative Societies Act, 1983 and therefore, he cannot be an employee as per section 3 of the Tamilnadu Payment of Subsistence Allowance Act, 1981 .

9. As far as Thiruvannamalai region is concerned, the Common Cadre Committee was formed only on 29.12.2004 and thereafter, the case of the petitioner was considered and the ratification of the order of suspension dated 29.03.2004 was issued. In the absence of formation of Common Cadre Committee, there is nothing illegal in the 1st respondent to pass the suspension order.

10. The 2nd respondent has also filed a counter affidavit individually in line of the counter affidavit filed by the 1st respondent reiterating that earlier the petitioner has filed W.P.No.29136/2005 and for the same relief, W.P.No.25549/2006 is filed. When once W.P.No.29136/2005 was dismissed by this Court holding that the petitioner is not entitled for payment of subsistence allowance, the same relief cannot be sought for by filing another writ petition. It is also reiterated that the petitioner is defined as an Officer under section 2(19) of the Tamilnadu Co-operative Societies Act, 1983 and therefore, the Tamilnadu Payment of Subsistence Allowance Act, 1981 is not applicable.

11. It is the case of the learned counsel for the petitioner K.Venkataramani, that once admittedly on 29.03.2004, the order of suspension was passed by the 1st respondent who was not the competent authority as per section 75 of the Tamilnadu Co-operative Societies Act, 1983, the subsequent ratification by the 2nd respondent dated 20.05.2005 cannot validate the original illegal order of the 1st respondent. In any event a reference to the order of the 2nd respondent dated 20.05.2005 would show that what was passed by the 2nd respondent on the said date was not merely a ratification of the earlier order of the 1st respondent dated 29.03.2004, but it is an order of suspension placing the petitioner under suspension from 20.05.2005 for a period of three months. In any event, as correctly pointed out by the learned counsel for the respondents that it was the order of suspension dated 20.09.2004 passed by the 1st respondent and also subsequent order of suspension passed by the 2nd respondent dated 20.05.2005 which were challenged before this court in W.P.No.29136/2005 and this court after considering the entire facts and circumstances of the case, by order dated 17.03.2006 has dismissed the writ petition with the following observation:
"Considering the facts and circumstances of the case that this is a case suspending the petitioner, no prejudice to be caused or no penal consequences caused to the petitioner and therefore, I see no reason to entertain the writ petition and accordingly, the writ petition is dismissed."

12. Admittedly, the said order passed by this Court has become final. In view of the said categoric position, I do not think that W.P.No.25549/2006, which is almost identical in terms with that of W.P.No.29136/2005, would be sustainable. In the said writ petition, the impugned order dated 12.05.2006 is only a continuation of the order dated 20.05.2005 passed by the 2nd respondent and all other subsequent orders extending the three months period has been passed by the 2nd

respondent and admittedly at the time when those orders were passed including that of the impugned order dated 12.05.2005, the 2nd respondent was the competent authority and therefore, I do not see any reason to interfere with the result that the W.P.No.25549/2006 fails and the same is dismissed.

13. As far as the prayer in w.P.No.25088/2006 which pertains to the payment of subsistence allowance to the petitioner for the period of suspension from 29.03.2004 till 31.07.2006, learned counsel for the respondents would submit placing reliance on the judgment of this Court reported in 2002 (4) CTC 339. That was a case wherein while considering the case of the Secretary of the Primary Agricultural Cooperative Bank as that of the 1st respondent Bank therein, this Court has considered that by applying section2(19) of the Tamilnadu Co-operative Societies Act, 1983, the Secretary should be deemed as an Officer and therefore, the Tamilnadu Payment of Subsistence Allowance Act, 1981 will not have any application. This court has come to a conclusion that Tamilnadu Co-operative Societies Act, 1983 being a special law, it overrides the Tamilnadu Payment of Subsistence Allowance Act, 1981, since it is a general law and on that basis it was held that the Secretary is not entitled for subsistence allowance under the Tamilnadu Payment of Subsistence Allowance Act, 1981.

14. Even though under the Tamilnadu Payment of Subsistence Allowance Act, 1981, the petitioner cannot be entitled strictly speaking as a employee for the purpose of subsistence allowance, it cannot be said that the petitioner is not entitled for allowance if he is otherwise eligible as per the By-laws framed under the Tamilnadu Co-operative Societies Act, 1983. In this regard, it is relevant to point out as correctly pointed out by the learned counsel for the petitioner that the Government has passed G.O.Ms.No.55 Cooperation, Food and Consumer Protection Department, dated 24.3.2000 under which the Common Cadre Service for Primary Agricultural Cooperative Banks were constituted and in fact the Tamilnadu Primary Agricultural Bank Common Cadre Service Regulations, 2000, has been framed. This being the statutory Regulation framed in accordance with the provisions of Tamilnadu Co-operative Societies Act, 1983, if the provision of such Regulation enables the Secretary to receive subsistence allowance from the period of suspension, certainly, in accordance with the said regulations, he will be entitled for the allowance.

15. Now referring to the Tamilnadu Primary Agricultural Cooperative Bank Common Cadre Services Regulations, 2000, Regulation No.29 which deals about the disciplinary proceedings in Clause(d)(i) which reads as follows:

"Clause 29(d)(i): A cadre employee under suspension shall be entitled to a subsistence allowance as per the payment of Subsistence Allowance Act 1981."

16. Admittedly, the petitioner being the Secretary of the agricultural Cooperative Bank, he is a cadre employee and as per the regulations framed in accordance with the provisions of the Tamilnadu Co-operative Societies Act, 1983, he has the eligibility for payment of subsistence allowance. Merely because the subsistence allowance is payable as per Subsistence Allowance Act, 1981 as stated in the Regulation, it does not mean that this Court has already held that the Tamilnadu Payment of Subsistence Allowance Act, 1981 is not applicable and therefore, the petitioner will continue to be disentitled in spite of the creation of statutory regulations as per G.O.Ms.No.55 dated 24.03.2000. A reference is made in the said regulations in respect of Subsistence Allowance Act, 1981 which only mean that it is in respect of quantum of subsistence allowance as prescribed under the Tamilnadu Payment of Subsistence Allowance Act, 1981 and the act itself has no application.

17. Even as correctly pointed out by this Court in the judgment reported in 2002 (4) CTC 339, the payment of Subsistence Allowance of 1981 must be made applicable for the purpose of enabling a person like the petitioner holding the post of Secretary to have the right of payment of subsistence allowance in the said Act, but by applying the regulations framed as per the Special law, viz.,

Tamilnadu Co-operative Societies Act, 1983 which enables him to get subsistence allowance, I have no hesitation to come to a conclusion that the petitioner is entitled for subsistence allowance as per regulations framed in accordance with G.O.Ms.No.55 dated 24.3.2000.

18. It is also relevant to point out that the validity of G.O.Ms.No.55, Cooperation, Food and Consumer Protection Department, dated 24.03.2000 has been upheld by the Division Bench of this Court in the judgment reported in 2003 (3) CTC 65 (P.Baluchamy Vs. State represented by its Secretary to Government, Cooperation, Food and Consumer Protection Department, Fort St.George, Chennai-9 and two others).

19. In view of the same, even though the contention of the learned counsel for the respondents is attractive, that this Court was not inclined to deal with the Tamilnadu Payment of Subsistence Allowance Act, 1981, on the facts and circumstances of the case, especially in the circumstances when the service regulations, which are statutory in character and which are binding upon the petitioner as well as the respondents provides for enabling the petitioner to get subsistence allowance the same cannot be denied by the respondents.

20. Accordingly, W.P.No.25088/2006 is ordered with the following direction:

In view of the same, by applying the provision of Tamilnadu Primary Agricultural Cooperative Bank Common Cadre Regulations 2000, the respondents are directed to compute the subsistence allowance due to the petitioner from the date of original suspension namely 29.03.2004 to 31.07.2006 and pass appropriate orders regarding subsistence allowance and such amount shall be paid within a period of 12 weeks from the date of receipt of the a copy of this order.

2. It is also made clear that since admittedly there has been an earlier direction from this Court that the enquiry has been completed and a direction was issued to pass final orders, I am of the considered view that the respondents shall pass final orders in the disciplinary proceedings so as to put an end to the entire dispute especially in the circumstance that the same is helpful to the respondent Society also, since the respondent Society is made to pay the subsistence allowance without extracting work from the petitioner.

And W.P.No.25549/2006 is dismissed. No costs.
Consequently, connected M.Ps.are also dismissed.

ap

To

1.The Special Officer,
HH 565 Kadaladi Primary Agri. Co-op. Bank Ltd.,
Thiruvannamalai District.

2.The Zonal Joint Registrar,
Joint Registrar of Co-op. Societies,
Thiruvannamalai.

[vsant 8130]